

FILE

RESOLUTION

MOVED by Mauro SECONDED by Connolly  
that the following Resolution be adopted:

WHEREAS, as owner of the Iowa Events Center complex, Polk County is party to a Master Lease Agreement with Global Spectrum, L.P. concerning Wells Fargo Arena ("Lease Agreement"), and;

WHEREAS, pursuant to the Lease Agreement, Global Spectrum, L.P. has the right and authority to license the use of Wells Fargo Arena to third parties, and;

WHEREAS, Global Spectrum, L.P. desires to enter into an agreement with IPF, LLC, for the use of Wells Fargo Arena for the Arena 1 Football League, and;

WHEREAS, pursuant to the Lease Agreement, any agreement regarding the licensed use of Wells Fargo Arena is subject to the approval of Polk County, and;

WHEREAS, it is the desire of Polk County to approve such an agreement.

NOW, THEREFORE BE IT RESOLVED that Polk County provide its approval to the License Agreement between Global Spectrum, L.P. and IPF, LLC, concerning the use of Wells Fargo Arena.

POLK COUNTY BOARD OF SUPERVISORS

Tom Hockensmith  
Chairperson

SUBMITTED BY:

Sue Elliott  
Sue Elliott  
Project Manager

APPROVED AS TO FORM:

M.B.O'Meara  
Michael B. O'Meara  
Assistant Polk County Attorney

ROLL CALL  
FOR ALLOWANCE

JUL 27 2010

ALLOWED BY VOTE  
OF BOARD  
Tom Hockensmith  
CHAIRPERSON

E.J. Giovannetti	<u>Yea</u>	Nay
Robert Brownell	<u>Yea</u>	Nay
Angela Connolly	<u>Yea</u>	Nay
John F. Mauro	<u>Yea</u>	Nay
Tom Hockensmith	<u>Yea</u>	Nay
Yea <u>5</u> Nay <u>0</u>		
Above tabulation made by <u>BS</u>		

Fiscal Impact: None.

#24

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (this "Agreement" or "License"), is made and entered into as of the 20th day July, 2010, by and between **GLOBAL SPECTRUM, L.P.**, a Delaware limited partnership, having an office at 730 Third Street, Des Moines, IA 50309 ("Licensor"), and **IPF, LLC**, an Iowa corporation, having its principal office at 210 NE Delaware Avenue, Suite 200, Ankeny, IA 50021 ("Licensee").

## BACKGROUND

Licensor leases from Polk County, Iowa (the "County") the sports and entertainment arena located in Des Moines, Iowa currently known as the Wells Fargo Arena, and has the right and authority to license use of the Wells Fargo Arena to third parties. Licensee represents and warrants to Licensor that it has acquired a franchise from the Arena Football 1 League, a/k/a "AF1" (the "League") and has the right to own and operate a professional men's football team, name Iowa Barnstormers (the "Team") in the Iowa State region. Licensee desires to license the use of the above-referenced arena from Licensor, and Licensor is willing to license the use of the above-referenced arena to Licensee, all subject to the terms and conditions set forth below.

NOW, THEREFORE, incorporating the above background, in consideration of the covenants and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. License Grant.

- A. Licensor hereby grants to Licensee a non-exclusive license to use, and Licensee shall use, as determined in accordance with Subsections 2.B. and 12.A below, that portion of the arena currently known as the Wells Fargo Arena (the "Arena"), including the Arena's floor, seating facilities, access areas, public address and sound systems, scoreboards, video boards, dressing rooms, press rooms, corridors, stairways, walks, concourses, lavatories, sub-levels in or about the Arena and such other areas or parts of the Arena as may be necessary or reasonably desirable for the presentation and play of Licensee's entire "home" schedule of pre-season, regular season and playoff men's professional football games (hereinafter, the "Games") during the Term (as defined below), subject to the terms and conditions set forth below and in Schedule I attached hereto.

2. Term; Renewal; Scheduling.

- A. The term of this License shall commence upon execution and delivery hereof and shall remain in effect for five (5) League Seasons (defined below) through and including the 2014 League Season (the "Term"). The parties acknowledge that

the Term may be extended for a Force Majeure Event as described in Section 20.C below. Without limiting the foregoing, in the event of a Labor Dispute (as defined in Section 8.F during any League Season which results in cancellation (without rescheduling) of a majority of the Games in that League Season, Licensor shall have the option, in its sole discretion, to extend the Term for an additional League Season upon delivery of notice of such intention to Licensee.

- B. Subject to the provisions set forth on Schedule I attached hereto and made a part hereof, beginning in 2010 and between the months of March and July of each year during the Term (as such period may be modified to comply with League mandated changes to the timing of the League schedule) ("League Season"), Licensor shall make the Arena available to Licensee on available dates, and Licensee shall use the Arena, for the Permitted Use (as defined in Section 12.A below). Licensee agrees that the Team shall play all of its Games in the Arena throughout the Term, and the Team shall not relocate outside the boundaries of its current local territory.

3. Items To Be Provided by Licensee.

In connection with each Game to which this Agreement applies, Licensee shall furnish or arrange to be furnished, at its own expense, the following:

- A. Two teams of men's professional football players, in conformity with League rules and regulations;
- B. Equipment and uniforms for the players ("Team Equipment");
- C. Coaches and any assistant coaches;
- D. Trainers and medical personnel for the players;
- E. Referees and any other necessary officials for the Games;
- F. Timekeepers, scorekeepers, game clock operators and public address announcer for the Games;
- G. Catering for press or others for whom Licensee desires to provide refreshment, special badges and signage, soap, towels and related locker room items;
- H. Food, beverage and travel expenses for the players, coaches and referees, as agreed with the players, coaches and referees;
- I. All Team personnel, including staff and front office personnel, according to Licensee's needs;



In connection with each Game to which this Agreement applies, Licensor shall furnish or arrange to be furnished, at its own expense unless otherwise indicated, the following:

- A. The Arena, including the Arena's floor, seating facilities and access areas, the public address system, sound system, scoreboards and video board, available locker/dressing rooms for the visiting team and referees, press room and broadcast areas, and such other parts or areas of the Arena as may be reasonably necessary for Licensee to present, play and broadcast the Games;
- B. A locker room for use by the Team on each Game day, provided that Licensor shall retain the right to utilize said locker room at times and in connection with events in the Arena when use is not required by the Team. In addition, Licensor shall provide locker room, coaches' offices, training room, and team meeting room space for the use of the Licensee during its season. Such space shall be used exclusively by the Licensee during its season, provided that the Licensor may utilize said locker room at times and in connection with events.
- C. Sixty (60) parking passes in an area designated by Licensor within the non-public Arena lot, for use by the Team's players and other Licensee personnel. Licensee may purchase additional parking passes for \$4.00 per place for Licensor owners. Passes are not for resale to any season ticket holders.
- D. Normal and customary levels of electricity and other utilities for lighting, heating, air conditioning and other services used in conjunction with the Games, consistent with that which is provided for other Arena events;
- E.
  - (1) Necessary set-ups and changeover for the Games, including set-up of the field, goals and shot clocks as approved for League games, provided that Licensee shall pay the cost of stagehands in connection therewith;
  - (2) Upon request by Licensee, Licensor shall apply sponsor logos and messages to the playing surface and dashboards, subject to the provisions of Subsection 8.B. below. As between Licensor and Licensee, Licensee shall be responsible for all expenses associated with producing sponsor logos for, and affixing the same to, the playing surface and the dashboards. Licensee shall further be solely responsible for all costs incurred by Licensor as a result of any changes in advertising copy, a change in position, television restrictions or any other cause.
- F. The following support services, the cost of which shall be borne by Licensor and are included within the Per-Game Fees (as defined below):
  - (1) Cleaning and janitorial service during and after the Games;

- (2) The services of the following staff and personnel in connection with Games: ushers, ticket-takers, emergency medical technicians (for patrons only), change-over and set-up crew, sound technician, house electrician, and ticket sellers and box office personnel for the day or evening of each Game.
- G. The following support services, the cost of which shall be paid by Licensee (or reimbursed to Licensor by Licensee), as part of the Preliminary Settlement (as defined below) for the applicable Game ( unless otherwise expressly provided for below):
- (1) The services of the following staff and personnel: security guards and supervisors, police detail, stagehands (stagehands must operate all spotlights), video board and camera operators, game operations and production staff, and any other event operational staff and personnel reasonably necessary, as determined by Licensor, for the efficient and safe presentation of the Games or to comply with League requirements; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT BE CONSTRUED AS A WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE ADEQUACY OR EFFECTIVENESS OF ANY LEVEL OF SUCH STAFFING OR SECURITY MEASURES, FOR ALL OF WHICH, LICENSOR IS HEREBY EXPRESSLY RELEASED AND EXCULPATED BY LICENSEE.
  - (2) The costs of any personnel or services provided by Licensor in connection with pre- or post-Game events or activities shall be paid by Licensee.
  - (3) At Licensee's option, group sales and/or season ticket sales, provided that Licensee shall be solely responsible for paying or reimbursing Licensor for all applicable sales commissions (charged at the rate of ten percent [10%] on the gross ticket selling price, less applicable amusement taxes), and sales expenses related thereto.
  - (4) Additional mutually-agreed upon services, other than those set forth above, which Licensee requests to be provided by the Licensor and which Licensor is reasonably able to provide, provided that the costs thereof shall be paid and/or reimbursed to Licensor by Licensee

6. Marketing and Promotion.

- A. Licensee, at its sole expense, shall provide all necessary personnel to, and be solely responsible for, the marketing and promotion of the Team and the Games, except that (1) Licensee may request that certain Licensor personnel assist Licensee in such marketing and promotional activities, and, in the event Licensor agrees to assist Licensee in such manner, Licensee shall pay Licensor a mutually agreed upon

fee for such services, and (2) Licensor may, in its sole discretion, cause mentions of the Games to be included in general Arena event advertising, in the general rotation of spots for Arena events featured on or in the videoboard at the Arena, in newspaper advertisements for Arena events, and/or promotional brochures. All advertisements for the Games that are developed by Licensee (including but not limited to all advertising publicity material, promotions material, press releases, posters, flyers, handbills and radio and television commercials) shall be produced at the sole cost and expense of Licensee.

- B. (1) Licensee shall make mention of the full and complete name of the Arena ("Wells Fargo Arena") (or any successor Arena names), as applicable, as the site of the Games in connection with any marketing, advertising or promotion thereof. All promotional materials shall contain the standard Arena logo (or any substitute logo directed by Licensor) positioned as designated by Licensor. Licensee shall submit to Licensor for its prior written approval all such uses of the Arena name and logos prior to dissemination of any promotional materials, which approval shall not be unreasonably withheld or delayed.
- (2) All advertisements and marketing and promotional materials for the Games presented or proposed by Licensee pursuant to the provisions of this Agreement (including, but not limited, to all advertising, publicity material, promotions material, press releases, posters, flyers, handbills, and radio and television commercials) shall be submitted by Licensee for approval of Licensor before use, which approval shall not be unreasonably withheld or delayed.
- C. Unless otherwise agreed by Licensor in writing, Licensee, at its sole expense, shall be responsible for the sale of season tickets in the general seating areas of the Arena. Licensor shall be responsible for ticket sales in the "Suites" and "Loge Boxes." With respect to seats in the "Club Seating Areas" of the Arena, Licensee acknowledges that current and future Club Seat Area licensees ("Club Seat Licensees") have the first right to purchase tickets to the Games in the Club Seating Areas that are the subject of their "Club Seating License." In the event any such Club Seat Licensee declines the option to purchase such tickets to the Games, Licensor shall release such Game tickets to the Licensee who may sell such tickets to the general public on a Game to Game basis. Licensee agrees Club Seating prices will never exceed the amount that is charged to the general public in the 100 Level Sideline Sections (102-106 & 114-118). It shall be understood that Licensee shall not have the right to sell season tickets in the Club Seating Area.
- D. Licensee agrees that it shall provide to Licensor, or cause to be provided for the benefit of Licensor, at no cost to Licensor, the advertising time for the purpose of promoting up-coming events at the Arena. The content of all such advertising shall be provided by Licensor, and shall not be deviated from by Licensee without

Licensors's prior written consent. All costs of producing the content of such advertising shall be borne by Licensor. Licensor shall receive the following advertising time:

- (a) One minute (1:00) of radio advertising time during each Game broadcast on radio (if any);
- (b) Thirty seconds (:30) of television advertising time during each Game broadcast on local television (if any); and
- (c) Five minutes (5:00) on the Arena's public address system during each Game.

7. Broadcasting.

- A. Subject to the prior written approval of Licensor, which approval shall not be unreasonably withheld or delayed, Licensee, at its sole cost and expense, shall have the right to, in any reasonable manner, transmit, record or videotape or otherwise reproduce or disseminate all or any part of, or a description of all or any part of, the Games (including but not limited to radio, broadcast and non-broadcast television, closed circuit television and/or pay television, video disc, compact disc recording and the internet) (herein referred to collectively as a "Broadcast," ) and all such Broadcasts may be originated and produced by a company selected by Licensee. Licensee may record and/or videotape the Games for its own limited promotional use without first obtaining such written approval. Licensee shall reimburse Licensor for any and all out-of-pocket costs (including, without limitation, the costs of providing any necessary interconnections and electrical hook-ups) incurred by Licensor in connection with such Broadcasts. Nothing in this Agreement shall be construed as preventing Licensor from charging any third party (including without limitation any visiting football team or entity with which Licensee contracts to broadcast such Games) a charge in connection with an out-of-market Broadcast of a Game, provided that, in charging for such Broadcasts, Licensor shall give due consideration to any request by Licensee to account for reciprocal agreements entered into by Licensee for broadcasts of Licensee "away games". Licensee shall cause all entities with which Licensee contracts to broadcast Games to arrange with Licensor the terms and conditions (which must be satisfactory to Licensor in its reasonable discretion) under which such entities may have access to, and the use made by such parties of, the Arena.
- B. In the event Licensee causes the Games to be televised, each contract between Licensee and such television broadcaster(s) shall prohibit the use of blocking and insertion technology in respect of any signage which has been installed at the Arena by Licensor or any other party, or to insert advertising or signage not otherwise physically present or appearing in the Arena.

## 8. Advertising and Sponsorships.



- A. Subject to the provisions of this Section 8, Licensee shall have the right to sell all pre-approved Game-specific advertising and sponsorships (e.g., playing surface, game clocks, player areas, temporary parapet or railing banners, temporary banners over the dashboards and video board promotions) (collectively, the "Licensee Advertising") and retain all proceeds therefrom. No Licensee Advertising shall be permitted to cover any permanent signage at or within the Arena. The placement of any temporary parapet or railing banners shall be subject to the approval of Licensor (not to be unreasonably withheld). Other than as specifically set forth in this Section 8.A, Licensee shall have no right to control or sell, or to any proceeds from the sale of, any advertising or sponsorship rights at the Arena, including but not limited to all permanent advertising signage, LED fascia, naming and pouring rights, premium seating, sponsorships, branding relationships and memorial gifts, the proceeds of which shall belong solely to Licensor.
- B. Licensor reserves the right to approve or reject each Game sponsor and all Licensee Advertising, promotional announcement and other advertising which Licensee or any of its sponsors proposes to post or make within the Arena. Permission to display such materials or make such announcements shall be subject to the approval of Licensor, in writing, in advance, and Licensor's permission shall not be unreasonably withheld or delayed. Any Licensee Advertising shall not violate any then-existing contractual agreement between any advertiser and Licensor, including in respect of any exclusivities granted pursuant to such agreement.
- C. Licensee agrees that each advertising or promotional agreement that Licensee enters into with a third party concerning advertising, promotions or sponsorships to be exhibited, displayed or conducted at or about the Arena (a "Third Party Agreement") shall not violate any product or service advertising or sponsorship exclusivity which Licensor has afforded any person or entity pursuant to a contractual arrangement with Licensor or its sales agents, and such Third Party Agreements shall, therefore, be and be made subject to Licensor's prior written approval, which approval shall not be unreasonably withheld or delayed (except in connection with a conflict with any Arena exclusivities, in which case such approval may be withheld in Licensor's sole discretion). In addition, Licensee agrees that it shall include in all Third Party Agreements a provision permitting termination thereof by Licensee in the event Licensor hereafter enters into a contractual arrangement with an advertiser requiring exclusivity in respect of a product or service that is the subject of the Third Party Agreement. In the event Licensor requires termination of such a Third Party Agreement, Licensor shall use best efforts to give Licensee at least fifteen (15) days' prior written notice thereof, and Licensee shall not be obligated to terminate such Third Party Agreement unless and until Licensor has agreed to reimburse Licensee for the actual revenues that Licensee otherwise would have derived from such in-Arena advertising and

signage, at the rate card value thereof (with appropriate reduction for trade or barter), less any costs that otherwise have been incurred by Licensee in providing such advertising or signage during the term of such Third Party Agreement.

- D. Licensors agree to provide Licensee with a list of then-applicable Arena advertising exclusivities upon request by Licensee prior to the League Season.
- E. Licensee may have Game related novelties, souvenirs, wares and programs sold by Licensors (through Licensors' designee) from two (2) permanent concession stands in the Arena during all Games. The location of such concession stands shall be in Licensors' sole discretion.

9. License Fee.

- A. As part of the consideration for Licensors' agreement to grant the license granted pursuant to Section 1, and to furnish the items set forth in Section 4 and 5 of this Agreement, Licensee shall pay Licensors the fees set forth below:

- (1) For each regular season, pre-season or playoff Game, Licensee shall pay Licensors a per-Game base license fee based on the attendance of the Game (attendance will be calculated by scan count during each game)(the "Per-Game Fee").

<u>Attendance For Any Game</u>	<u>2010 Season</u>	<u>2011-2014 Season</u>
Under 4,000	\$ 7,000	\$ 6,500
4,001 - 5,500	\$ 6,500	\$ 6,000
5,501 - 7,000	\$ 5,250	\$ 5,000
7,001 -9,999	\$ 4,250	\$ 4,000
Over 10,000	\$ 2,500	\$ 2,000

- (2) In addition, as more fully set forth in Section 15.F below, Licensee shall pay Licensors a three percent (3%) commission on all credit card sales at the "Arena Box Office."
- (3) Licensee shall be entitled to a fifty cent (\$.50) rebate for each paid ticket (not including comps) to each Game, not including Suite and Loge Box seats. .
- B. Licensee shall pay to Licensors, no less than five (5) business days before each scheduled Game, the Per-Game Fee based on estimated attendance, as applicable, described in Sections 9.A(1) above. The Per-Game Fee shall be adjusted in the Preliminary Settlement (as defined below) based on the actual Game attendance.
- C. In addition to the Per-Game Fees and any other amounts due to Licensors hereunder (including those amounts described in Section 9.A(2) and 9.A(3))

above), Licensee shall pay Licensor for any reimbursable expenses described in Sections 5.E. and 5G above, or in any other provision of this Agreement (collectively, the "Reimbursable Expenses").

- D. As further consideration hereunder, Licensors shall be entitled to retain all proceeds from the sale of "Club Seats" for the Game less: (1) Twenty Five Dollars (\$25) per Club Seat sold, per Game for the 2010, 2011, 2012 and 2013 League Seasons and Thirty Dollars (\$30) per Club Seat sold, per Game for the 2014 League Season; (2) Forty Dollars (\$40) for each Club Seat sold located in rows two (2) through five (5) sold, per Game during the Term; and (3) Sixty Dollars (\$60) for each Club Seat ticket sold located in the first (1<sup>st</sup>) row sold per Game during the Term (collectively the "Licensee Club Seating Revenue"). Licensee acknowledges that the Licensors shall have the right to charge in its sole discretion a "premium" over the established ticket price for seats in the Arena's Club seating area and retain one hundred percent (100%) of the proceeds associated therefrom. Notwithstanding the foregoing, to the extent the Club Seats are sold by Front Row Marketing Services (or any other party engaged by Licensors to sell such inventory), the \$20 per Club Seat to be paid to Licensee under this paragraph shall be reduced by the commission due from Licensors to such party (currently twelve percent (12%)).
- E. As further consideration hereunder, Licensors shall be entitled to retain all proceeds from the sale of Suite and Loge seats for the Game less: (1) Zero Dollars (\$0) for each Suite and Loge ticket sold per Game, for the 2010 Season; (2) Twenty Dollars (\$20) for each Suite and Loge ticket sold, per Game, for the 2011 and 2012 League Seasons; (3) Twenty-Five Dollars (\$25) for each Suite and Loge ticket sold, per Game, for the 2013 League Season; and (4) Thirty Dollars (\$30) for each Suite and Loge ticket sold, per Game, for the 2014 League Season (collectively the "Licensee Suite and Loge Seating Revenue"). The Licensee Suite and Loge Seating Revenue together with the Licensee Club Seating Revenue shall be referred to herein as the Licensee Premium Seating Revenue. As further consideration, Licensee will receive the ticket revenue of any individual Suite Game Rentals for the 2010 Season. Licensee acknowledges that the Licensors shall have the right to charge in its sole discretion a "premium" over the established ticket price for seats in the Arena's Suite and Loge seating area and retain one hundred percent (100%) of the proceeds associated therefrom. Notwithstanding the foregoing, to the extent the Suite and/or Loge seats are sold by Front Row Marketing Services (or any other party engaged by Licensors to sell such inventory), the \$20 per each Suite and Loge seat to be paid to Licensee under this paragraph shall be reduced by the commission due from Licensors to such party (currently twelve percent (12%)).
- F. Licensee acknowledges that, Twenty-Six (26) Club Seats and six (6) Suites shall be reserved at all times for the use by Licensors and its designees (including during all Games). Tickets for these Twenty-Six (26) Club Seats and six (6) Suites shall not be made available for public sale, and there shall be no charge for tickets to games in

such Club Seats and Suites and Licensee shall not be entitled to any License Premium Seating Revenue therefrom.

- G. In the event of a strike, lock-out or other work stoppage affecting the League, the Team and/or its players ("Labor Dispute"), which Labor Dispute results in a failure by Licensee to present any Games that otherwise would have been scheduled (each, a "Missed Game"), this agreement shall continue in effect without modification, except the Licensee shall pay Licensor, as base rent under this Agreement and in lieu of Attendance Fee, Five Thousand Dollars(\$5,000) per Missed Game ("Missed Game Fee").
- H. In the event any governmental authority assesses, levies or imposes any imposition related to Licensee's or the Team's use of the Arena (other than income taxes or similar taxes on Licensor's income), Licensee shall be solely liable for and shall pay, prior to any delinquency, such impositions in full and such payment shall not be credited against any amount required to be paid by Licensee to Licensor hereunder. Furthermore, in the event that the League assesses, levies or imposes any surcharge or other fee on the price of any ticket, any such surcharge and/or fees shall be the sole responsibility and liability of Licensee (without reimbursement by Licensor) and shall similarly not be credited against any amount required to be paid by Licensee to Licensor hereunder. Any expenses or requirements relating to this Agreement that are imposed by the League are the sole responsibility of Licensee, including without limitation any capital improvements required at or to the Arena due to a change in League rules or regulations as such exist as of the Effective Date.

10. Concessions; Merchandising; Programs.

- A. Licensor specifically reserves to itself and its concessionaires the right to sell food, refreshments, beverages, parking and all other concessions at the Games. Licensee shall not sell or distribute, whether or not on a complimentary basis, any food or beverage and shall have no right to operate a concession during the Games (except as provided in Section 10.B below), without obtaining Licensor's prior written approval. Licensor shall have the right to retain 100% of any parking revenue. For so long Ovation Food Services or any other third party is providing food and beverage sales at the Arena, the net revenue to the Arena (i.e. the amount received by the Arena from such food and beverage provider, less any contribution to the concession capital improvement fund and applicable taxes) from the sale of food and beverage concessions at Games shall be split between the Licensor and Licensee as follows:

- (1) 2010 League Season: The following commissions shall be calculated on an incremental basis, as opposed to being retroactive back to dollar one (1).
- |                      |                                  |
|----------------------|----------------------------------|
| \$0 to \$40,000      | 100% to Licensor, 0% to Licensee |
| \$40,001 to \$60,000 | 80% to Licensor, 20% to          |

Licensee

In excess of \$60,000                      60% to Licensor, 40% to Licensee

- (2) 2011 League Season: The following commissions shall be calculated on an incremental basis, as opposed to being retroactive back to dollar one (1).

Licensee	\$0 to \$20,000	100% to Licensor, 0% to Licensee
	\$20,001 to \$40,000	80% to Licensor, 20% to
	\$40,001 to \$60,000	70% to Licensor, 30% to Licensee
	In excess of \$60,000	60% to Licensor, 40% to Licensee

- (3) 2012 League Season – The following commissions shall be calculated retroactive back to dollar one (1) and shall be split between the Licensor and Licensee as follows: seventy-five percent (75%) to Licensor and twenty-five percent (25%) to Licensee, with the Licensor selling all products.
- (4) 2013-2014 League Seasons – The following commissions shall be calculated retroactive back to dollar one (1) and shall be split between the Licensor and Licensee as follows: seventy percent (70%) to Licensor and thirty percent (30%) to Licensee.

- B. With respect to Term merchandise concessions, Licensor, or its designees, shall sell all programs, souvenir books, t-shirts and jerseys, videotapes, souvenirs, novelty items and other merchandise, at mutually agreed-upon prices, with its own personnel, and all proceeds from the sale of such Team merchandise concessions, after deduction of applicable taxes and all applicable licenses and inspections charges (if any), shall be divided ninety percent (90%) to Licensee and ten percent (10%) to Licensor. As between Licensor and Licensee, Licensee shall be responsible for insuring such items against, and Licensee shall bear the risk of, damage, theft or other loss of such merchandise, whether or not such merchandise is in the possession or control of Licensor or its agents at the time of such damage, theft or loss, and Licensee shall be responsible for all freight and transportation of such merchandise to and from the Arena. Payment of commissions, if any, to merchandise/program sellers shall be the sole responsibility of Licensee.

# 11. Preliminary and Final Settlement.

- A. On or about March 1 preceding each League Season, provided the parties do not reasonably anticipate a Labor Dispute to occur in such League Season, the parties shall conduct a preliminary settlement and account to each other for income received by and expenses incurred by each party with respect to the sale of tickets in the Arena Suites, Loges and Club Seating areas that are distributable or chargeable against the other party pursuant to the provisions hereof including, without limitation, the

Licensee Premium Seating Revenue ("Premium Seating Preliminary Settlement"). At such Premium Seating Preliminary Settlement the parties shall distribute to the applicable party all monies then due and payable and shall pay to the applicable party any and all reimbursable expenses as provided in this Section 11.A.

- B. On the third business day following each Game, the parties shall conduct a preliminary settlement and account to each other for those items of income received and expenses incurred by each with respect to such Game that are distributable to or chargeable against the other party pursuant to the provisions hereof, including, without limitation, the applicable Per-Game Fees (to the extent not previously paid by Licensee pursuant to Subsection 9.B), the credit card commissions set forth in Section 9.A(2), the inside ticket charges set forth in Section 9.A(3), Reimbursable Expenses, the merchandise fees due pursuant to Subsections 10.B, the Practice Fee in accordance with Section 12.C, (the "Preliminary Settlement"). At such Preliminary Settlement the parties shall distribute to the applicable party all monies then due and payable and shall pay to the applicable party any and all reimbursable expenses as provided in this Agreement.
- C. Within thirty (30) days after the date of the last regular season or, if applicable, playoff Game of each League Season during the Term, each party shall prepare and submit to the other a final written and itemized accounting, together with payment of any sums which remain due to the other hereunder ("Final Settlement"). In the case of Licensee, said accounting shall be certified as accurate by Licensee's certified public accounting firm or a Licensee officer acceptable to Licensor. In the case of Licensor, said accounting shall be certified as accurate by Licensor's box office manager or business manager. The requirements set forth in this Subsection 11.C shall survive the expiration or termination of this Agreement.
- D. Any and all payments and fees payable by Licensee hereunder shall be made by Licensee without abatement, deduction or set-off. Licensor may at any time, at its election, collect all or any part of the income or reimbursable expenses due to Licensor or its concessionaire(s) hereunder out of the receipts of sales of tickets, by whatever source, or concessions provided by or on behalf of Licensor. Licensee hereby grants to Licensor, and Licensor shall have, a first and prior lien upon and security interest in and to such receipts and a right of set-off to the extent of any amounts required to be paid by Licensee hereunder. Contemporaneously with the execution hereof, Licensee shall execute and deliver to Licensor a UCC-1 financing statement(s) and other documents and instruments and do all such other things as may be necessary in order for Licensor to perfect the grant of security herein provided.

## 12. Use of Arena; Time of Occupancy

- A. Licensee licenses the Arena for the sole purpose of playing League football Games and the customary pre-Game and post-Game activities presented in connection with these Games and for those other purposes specifically set forth in this Section 12 ("Permitted Use"), at the times set forth in this Agreement, and for no other purpose. Licensee shall not have the right to conduct any pre-Game or post-Game activities, concerts or other entertainment or events in the Arena without the prior written consent of Licensor, which consent shall not be unreasonably withheld, provided there are no conflicts with other events in the Arena at the requested time and the proposed event relates to a Permitted Use. Licensee agrees to use the Arena for the entire Term for the playing of all of its Games.
- B. Licensor agrees to open the Arena to the public at least one (1) hour before each Game. If available, Licensor shall use its best efforts to give Licensee access to the locker rooms, at least two (2) hours before each Game and to the playing area for warm-ups at least one and one-half (1-1/2) hours before each Game.
- C. Licensor will permit Licensee to utilize the Arena for practices on non-Game days, at no additional charge, provided that the football playing surface is already set up and there are no conflicts with other events at the Arena on the requested date and time. If there are no other event conflicts but the football playing surface is not set up, Licensor will permit Licensee to utilize the Arena for practice provided that Licensee pays to Licensor those costs incurred in setting up the football playing surface; alternatively, if there are no other event conflicts at Hy Vee Hall but the football playing surface is not set up there, Licensee may elect to utilize Hy Vee Hall for practice provided that Licensee pays to Licensor those costs incurred in setting up the football playing surface. Once the playing surface is set up at Hy Vee Hall, Licensor agrees to allow the playing surface to remain set up in Vets unless and until there is a conflict with another event (as determined by Licensor in its sole discretion). Such expenses shall be due and payable by Licensee at the Preliminary Settlement for the Game immediately following such practice(s).
- D. Subject to availability, Licensor shall provide to Licensee the use of a room in the Arena and access to a telephone during each Game for reasonable business purposes. Such room shall be provided at no additional charge, except that Licensee shall be responsible for all long distance phone charges.
- E. Licensor shall provide Licensee, for no additional charge, with the use of one (1) twelve (12) seat "Suite" (exact Suite to be determined by Licensor) during all of the Games. Licensee shall not sell, resell or attempt to sell or resell any tickets to the Suite issued thereto.
- F. Licensor shall provide Licensee, for no additional charge the use of one (1) four (4) seat "Loge Box" for all other events at the Arena, but only to the extent of, and subject to, Licensor's receipt of same free of charge from the promoter of such

event, Licensee shall promptly pay for all catering, food and beverage costs associated with such use upon receipt of invoice therefore.

- G. Licensee will be offered catering in the locker room, press area and in the its Suite for all Games. Licensee shall receive catering at cost plus a service fee of ten percent (10%). Licensee shall promptly pay for all catering, food and beverage costs with such use upon receipt of invoice therefore.

13. Security.

Licensee agrees that, as a material inducement to Licensor to enter into this Agreement and as a condition precedent to Licensor's obligations hereunder, Licensee shall provide, upon signing of this Agreement, (i) an irrevocable, standby letter of credit satisfactory to the Licensor, to guaranty Licensee's performance under this Agreement, in the amount of Seventy-five Thousand Dollars (\$75,000), and (ii) a security deposit ("Security Deposit") in the amount of Seventeen Thousand Dollars (\$17,000). The Security Deposit shall be held to secure performance of Licensee's obligations hereunder, and Licensor may, at its sole discretion, apply such deposit to satisfy any outstanding obligations of Licensee hereunder. The unapplied portion of the Security Deposit, if any, shall be returned to Licensee upon the expiration of the Term, provided that Licensee has complied with all of its duties and obligations hereunder. The Security Deposit may be commingled with Licensor's general funds, and no interest shall accrue thereon.

14. Ticket Sales; Box Office Services.

- A. Licensors will serve as the primary (i.e., advance) box office for the Games during the Term for advance sales and Game-day sales, and have the sole and exclusive right to control the distribution of single game tickets. Licensee shall have the right to control the distribution of season tickets, game-plan strips and group sales tickets, provided that Licensee uses the Ticketing Company as ticket agent for such sales.
- B. Licensors shall act as the custodian of all revenue from the sale of tickets except for those collected by Licensee (i.e. season tickets, game-plan strips and group sales, if applicable and to the extent such tickets are sold by Licensee). Such revenues shall not be released to Licensee until the applicable Preliminary Settlement, at which time Licensors and Licensee shall provide a complete accounting of the ticket sales for the applicable Game. Any refunds from tickets sold at Licensors's box office shall be determined by Licensors in Licensors's sole discretion. No interruption or malfunction of the computerized ticket system or Ticketing Company's services shall be deemed a breach of this Agreement by Licensors or render Licensors liable for damages or entitle Licensee to be relieved of any obligations under the terms of this Agreement; provided, however, Licensors agrees that it shall in good faith exercise all remedies available to Licensors to enforce the terms of its agreement with the Ticketing Company in the event of a breach thereof by the Ticketing Company which negatively



affects Licensee's ability to offer for sale tickets to Games, and shall coordinate with Licensee to take appropriate remedial action in the event of any interruption or malfunction of the computerized ticket system or Ticketing Company's services, if any, which negatively affects Licensee's ability to offer for sale tickets to Games.

- C. As set forth in Section 9.A(3), Licensee shall be solely responsible for any "inside" or similar charges payable to New Era Tickets or any successor ticketing company selected by Licensor ("Ticketing Company") that are imposed by Ticketing Company upon the event promoter or venue in connection with ticket sales for the Games. Such charges are currently assessed at the rate of \$0.20 per ticket printed at the box office (excluding suite tickets).
- D. Licensee shall have the right to establish the ticket prices for the Games, provided that Licensee shall consult in good faith, in advance, with Licensor with respect thereto. Licensee acknowledges that Licensor shall have the right to impose a One Dollar (\$1.00) ticket facility fee (the "Facility Fee") on each ticket sold to the Games, or provided on a complimentary basis, on top of Licensee's established ticket prices. All proceeds from the Facility Fee shall belong to Licensor. The Facility has the right to adjust the Facility Fee after the 2012 Season
- E. Licensee acknowledges and agrees that the "Ticketing Company" shall be the exclusive ticket agent for individual Game ticket sales, via all means and methods, including, but not limited to, telephone, internet, television and outlet sales. However, Licensee may solicit orders for season ticket and group sales through the Ticketing Company's ticketing system.
- F. Licensee shall be responsible for paying a commission of three percent (3%) on all credit card sales from the Arena box office, and shall pay all such amounts to Licensor at each Preliminary Settlement.
- G. Admission to the Games shall be by ticket only. Licensee's use and/or distribution of complimentary tickets for the Games shall be subject to Licensor's prior approval (not to be unreasonably withheld or delayed).
- H. Neither party shall permit tickets or passes in excess of the seating capacity of the Arena to be sold or distributed. The parties agree that any seat with limited or impaired vision shall not be placed on sale unless mutually approved and, if so approved, such tickets shall be clearly marked accordingly as "OBSTRUCTED."

15. Compliance With Laws; Other Obligations of Licensee. During the Term:

- A. Licensee covenants and agrees that Licensee shall, and shall cause every person associated with it in its performance of, or exercise of rights pursuant to, this Agreement to, fully abide by, conform to and comply with all applicable federal, state and local laws, rules, regulations, ordinances and codes (collectively, "Laws"), and all rules and regulations of Licensor for the management of the Arena. Licensee shall not use or attempt to use any part of the Arena for any use or proposed use which will be contrary to law, common decency or good morals or be otherwise improper or detrimental to the reputation of Licensor. Licensee shall, and shall cause every person associated with it in its performance of or exercise of rights pursuant to this Agreement to, use the Arena and associated facilities and properties in a safe and careful manner. Without in any way limiting the foregoing, Licensee agrees as follows:
- (1) Licensee shall strictly observe, and shall cause its employees and agents to strictly observe, the Fire Code of the City of Des Moines. Licensee acknowledges and agrees as follows:
- (i) All wiring on any booths or display fixtures must meet the rules and standards of the underwriters and Fire Department. Cloth, paper decorations, pine boughs, leaves, tree branches and all other decorations must be flameproofed, and use of combustible material is forbidden.
  - (ii) Approval must be obtained from the City of Des Moines (or other applicable municipality's) Fire Marshall's Office, and a permit must be obtained from the City of Des Moines (or other applicable municipality's) Department of Licenses and Inspections, in order to bring into the Arena explosives, gasoline, kerosene, acetylene or other fuel or combustibles. Such a permit shall be submitted for review to Licensor.
  - (iii) The fire fighting equipment in the Arena, such as fire extinguishers and fire hose cabinets and exits, shall not be covered or concealed in any manner whatsoever from public view or access.
  - (iv) No gasoline motor driven vehicles will be permitted to enter into the Arena, except at Licensor's discretion.
- (2) Licensee will comply with all Laws relating to the payment of all applicable taxes (excluding taxes based on Licensor's net income), including, without limitation, amusement or admissions taxes or similar charges on ticket sales, admissions or reservations, business privilege taxes, and use and occupancy taxes, and will make returns and pay all such taxes and charges immediately when due.

- B. Licensee agrees not to do any act or suffer any act to be done which shall mar, deface or injure any part of the Arena. Licensee shall not display or erect any letterings, signs, pictures, notices or, except as provided for herein, advertisements upon any part of the outside or inside of the Arena without the prior written consent of Licensor (which shall not be unreasonably withheld), or make any alterations or improvements to the Arena or any part therein without the prior written consent of Licensor (which may be granted or withheld in Licensor's sole discretion). After each use by Licensee, Licensee shall deliver up to Licensor all areas in and about the Arena in as good condition and repair as the same be found at the beginning of each such use, excepting usual wear and tear. Any damage or loss resulting on account of any misuse by Licensee or its agents, contractors, invitees, employees or the visiting team of any portion of the Arena or equipment in the locker rooms, showers or training rooms, or any use by Licensee or any of the foregoing persons of any part of the Arena in violation of any Law, shall be charged to and paid for by Licensee.
- C. In the event that any minor or foreign national is scheduled to play or appear in any Game, Licensee shall, in advance of such Game, obtain all necessary employment certificates and other permits and authorization as may or shall be required by any governmental authority.
- D. Licensee shall secure in advance, before the time and date of any Game, at Licensee's sole cost: (i) all licenses and permits that may be required by or for the use of the Arena in connection with the presentation of the Games; and (ii) any and all licenses required by any music performance societies, such as ASCAP, BMI and/or SESAC, for music to be utilized in connection with the Games.
- E. In licensing the use of the Arena to Licensee, it is understood the Licensor does not relinquish the right to control the management thereof and to enforce all applicable Laws and Arena rules and regulations. The decision of Licensor's representative as to the number of persons that can safely and freely move about in the Arena shall be final.
- F. (1) A duly authorized representative of Licensee shall be in attendance at the Arena when the doors are opened and throughout each Game. Licensor, its officers, agents and servants shall have the right at all times to enter any part of the Arena.
- (2) Licensee, in coordination with Licensor, shall provide all of its representatives and working personnel to be admitted to any working area of the Arena with distinctive, visual identification which shall be approved by Licensor in advance of each League Season during the Term.
- G. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways and all ways of access to public utilities of the Arena shall

be kept unobstructed by Licensee and persons acting under it and not used for any other purpose other than ingress or egress.

- H. Licensee shall maintain in good standing its membership in the League and refrain from taking any action which leads to the revocation or loss of Licensee's right to own or operate a League franchise.
- I. Licensee shall not permit the Team to play at any location other than the Arena (except in the event the Arena is not available) any pre-season, regular season, or playoff "home" Game, or any other games that the League schedules for the Team within the Team's franchise area.

16. Insurance.

- A. Licensee shall obtain, at its own cost and expense, and maintain in full force and effect during the Term, with insurance companies currently rated A-XII or better by Best's Key Rating Guide, a minimum of the following insurance:
  - (1) Comprehensive General Liability Insurance in the name of Licensee, which insures all operations of Licensee contemplated by this Agreement and the contractual assumption of liability reflected by this Agreement. Such General Liability Insurance shall be written with a limit of at least One Million Dollars (\$1,000,000) combined single-limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage liability, personal injury liability, and coverage for all acts and omissions of any employees, agents or players or any contractors or subcontractors retained by Licensee. Such policy shall stipulate that such insurance is primary of any valid and collectable insurance maintained by any of the foregoing entities for any claim(s) arising out of the playing of the Games or use of the Arena and that Licensee's insurance carrier will not seek indemnification from any of the foregoing's insurance carriers for any such claim(s);
  - (2) Excess liability insurance with limits of liability of not less than Ten Million Dollars (\$10,000,000). The policies shall be in umbrella form and shall provide excess coverage for all other listed liability coverages, including the employer's liability portion of the workers' compensation coverage;
  - (3) Special Form ("all risks") property insurance against loss or damage to Licensee's property in the Arena, in an amount equal to the replacement costs of such property.
  - (4) Statutorily required workers' compensation and employer's liability insurance respecting its players and employees and other personnel whose services are contemplated by this Agreement, with statutory benefits and

limits which shall fully comply with all federal, state and local requirements applying to this insurance, and which shall also include "Broad Form All States" and voluntary compensation endorsements; and

- (5) Comprehensive automobile liability insurance insuring against liability arising from the maintenance and use of all owned, non-owned, hired, leased and rented trucks, automobiles and other vehicles brought to or operated at the Arena or the surrounding premises, with a combined single limit for each occurrence of not less than One Million Dollars (\$1,000,000.00) for bodily injury, death or property damage. The coverage described in this subsection (5) may be part of the policy described in subsection (1), above, or may be covered by a separate policy.
- (6) To the extent commercially available on commercially reasonable terms, and upon thirty (30) days' advance notice to Licensee from Licensor, Licensee shall obtain insurance against such other operating risks, which now or hereafter may be customary to insure against in the use by licensees of facilities similar to the Arena, and such additional amounts and types of coverages as may be desirable in the reasonable judgment of Licensor.

- B. (1) All such policies of Licensee (other than the workers' compensation policy) shall list the Licensor, Polk County, Iowa, Global Spectrum, L.P. and the Wells Fargo Arena as additional insureds under such policies. Additionally, all such policies of Licensee shall be endorsed to provide that the underwriters and insurers of Licensee shall not have any rights of subrogation against Licensor, Polk County, Iowa, Global Spectrum L.P., Wells Fargo Arena, or any of their respective partners, employees, or agents. Further, all such policies of Licensee shall provide for thirty (30) days' notice to all additional insureds prior to any adverse modification or termination of any such policy.
- (2) In the event any of the insurance coverage or terms of any particular coverage required to be maintained or ceased to be maintained by Licensee pursuant to the terms of this Section 16 are not commercially available at reasonable rates, Licensee shall give written notice thereof to Licensor within three (3) days after execution and delivery of this Agreement. Licensor shall have the right, at its option, to place the coverage required at the expense of Licensee if such coverage is commercially available to Licensor at reasonable rates.
- (3) Certificates of all insurance required pursuant to this Section 16. shall be provided to Licensor upon execution hereof.
- (4) LICENSOR SHALL HAVE THE ABSOLUTE RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO LICENSEE IF

17. Breach.

- Σύμφωνα με τον Νόμο 2716/1999, ο οποίος αφορά την προστασία των προσωπικών δεδομένων, η επεξεργασία των δεδομένων των πολιτών για την παροχή υπηρεσιών είναι νόμιμη, εφόσον πληρούνται οι ακόλουθοι προϋποθέσεις:

18. Indemnity; Release of Liability.

- A. (1) Licensee shall indemnify, defend and hold harmless Licensor, the County, County officials, including without limitation the County Board of Supervisors, and any other present or future lender providing financing to the County in connection with their construction or operation of the Arena, and their respective successors and assigns, and each of their respective partners, agents, officers, directors, employees and representatives (collectively, "Indemnitees") from and against (i) any and all claims, suits, losses, injuries, damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) and costs of investigation (whether or not litigation occurs) (collectively, "Losses"), occasioned in connection with, or arising or alleged to arise from, wholly or in part, any breach by Licensee of any of its representations, warranties, covenants or agreements contained herein and (ii) any and all Losses occasioned in connection with, or arising or alleged to arise from, wholly or in part, (A) the acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee, or any of its agents, owners, officers, directors, members, managers, representatives, contractors, employees (and in respect of which, Licensee hereby waives its immunity under the Workers Compensation Act), servants, players, guests, invitees, participants or performers appearing at the Games or other events Licensee is permitted to host hereunder (including support personnel in connection with the presentation of the Game), patrons, persons assisting Licensee (whether on a paid or voluntary basis) or any person admitted to the Arena by Licensee, at any time while the Arena (or any part thereof) is being used by or for the benefit of Licensee or is under the control of Licensee, or (B) Licensee's exercise of the privileges herein granted.

(2) Licensee's obligation to indemnify, defend and save and hold harmless Licensor and the Indemnitees shall apply even if Licensor or any of the Indemnitees was, or is alleged to have been, negligent, and it is the intent of this Agreement that Licensee hold harmless Licensor and the Indemnitees from and against any negligence (whether ordinary or gross) on the part of Licensor or any of the Indemnitees. It is further the intent of this Agreement that this indemnity provision shall apply to any claims made by employees of Licensee against Licensor or any of the Indemnitees, and this Agreement is deemed a written agreement for indemnity under the Iowa Workers' Compensation laws.

- B. Licensee hereby relieves and releases Licensor and the Indemnitees from:

- (1) any and all liability to Licensee by reason of any injury or damage to any property in the Arena belonging to any of Licensee, its employees or invitees;

- (2) any and all liability to Licensee or others (to the extent Licensee may relieve or release Licensor as to others) as a result of theft, vandalism or pilferage of any property belonging to or brought into the Arena by Licensee.
  - C. Licensee acknowledges that this Agreement imposes no contractual obligations upon the County, unless, until and only if the County expressly assumes in writing the obligations of Licensor hereunder pursuant to the provisions of that certain Master Lease Agreement by and between the County and Licensor, of even date herewith (the "Master Lease Agreement"); that in the event of a default or breach under this Agreement, of any kind or nature whatsoever, Licensee shall look solely to Licensor at the time of the default or breach for a remedy or relief; and that neither the County nor any member (including any member of the County's Board of Supervisors), official, officer, employee, agent, independent contractor or consultant of the County, shall be liable to Licensee or any successor in interest to Licensee, in the event of any default or breach by the County under the Master Lease Agreement or of any other obligation under the terms of this Agreement and that Licensor is not and shall not act as an agent of the County or in any manner contract for or bind the County.
  - D. This provisions of this Section 18 shall survive any termination or expiration of this Agreement.
19. Representations and Warranties.
- A. Each party represents and warrants to the other that:
    - (1) such party has the full corporate or partnership power and authority to enter into and fully perform this Agreement;
    - (2) this Agreement has been duly executed and delivered by such party and constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms (subject to general principles of equity and creditors' rights generally); and
    - (3) none of the execution, delivery or performance of this Agreement (i) requires the approval or consent of any third party (except for the League, whose consent Licensee shall promptly seek upon execution and delivery hereof, and Polk County, Iowa, whose consent Licensor shall promptly seek upon execution and delivery hereof), or (ii) conflicts with or results in any breach or violation of, or constitutes a default under, any material agreement or other instrument or any decree, order, law, statute, rule or regulation (governmental or otherwise) to which such party is a party or by which such party is bound.
  - B. Licensee further represents and warrants to Licensor, on and as of the date hereof, that it has obtained a valid franchise from the League to present the Games in the



Iowa State area, that such franchise is in good standing as of the date hereof, and that it has fulfilled all of its obligations to the League.

20. Loss of Use of Arena; Force Majeure.

- A. Casualty Loss. Should the Arena or any part thereof be destroyed or damaged by fire or by any other cause, or if any Event of Force Majeure (defined below) shall render Licensor unable to provide the Arena to Licensee for the purpose of playing the Games as contemplated hereunder, (i) Licensor shall have the right to terminate this Agreement, without being liable or responsible to Licensee for any damage or loss caused thereby; and (ii) if such condition was not caused by an act or omission of Licensee or its employees, agents or representatives, and (A) the County notifies Licensee in writing that it has determined not to restore the Arena, or (B) due to such condition Licensor is unable to provide the Arena to Licensee for the purpose of playing the Games as contemplated hereunder for a period of twelve (12) consecutive months, Licensee shall have the right to terminate this Agreement, without liability (other than liabilities accruing prior to the occurrence of such condition, if any). Licensee hereby waives and releases Licensor and the Indemnitees from any and all Losses on account of such termination (whether effected by Licensor or Licensee), irrespective of whether such Losses arise out of the negligence (whether ordinary or gross) of Licensor or any of the Indemnitees.
- B. Safety Precautions. Licensee acknowledges and agrees that Licensor shall have the power to extinguish all utilities and order the evacuation of all or any portion of an Arena, or cause to be removed therefrom any person or group of persons, any materials, equipment or other items if, in its sole judgment, danger is imminent or dangerous circumstances have already occurred and such action is necessary to secure the safety and welfare of persons or property. In such event, Licensee hereby waives and releases Licensor and the Indemnitees from any and all Losses related thereto, irrespective of whether such Losses arise out of the negligence (whether ordinary or gross) of Licensor or any of the Indemnitees.
- C. Force Majeure. Should Licensee be unable to take possession of the Arena or present any Game due to an Event of Force Majeure, without limiting the terms of Section 20.A above, (i) neither Licensor nor Licensee shall have any liability under this Agreement, and (ii) performance hereunder shall be suspended during and as often as any such interruption caused by such Event of Force Majeure and the Term hereof shall be extended for a period of time equal to the period performance hereunder is suspended due to such cause, provided that during the period of such Event of Force Majeure, Licensee shall attempt to rebook any such missed Game(s) at the Arena on a date or dates satisfactory to the parties. Upon the removal of such condition, this Agreement and the rights and obligations of the parties hereunder shall be reinstated for the remainder of the Term. The term "Event of Force Majeure" shall mean any and all acts of God, strikes, lock-outs,

work stoppages, industrial disturbances, acts of the public enemy, laws, rules and regulations of governmental or quasi-governmental entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), arrest or other restraint of government (civil or military), blockades, insurrections, riots, vandalism, terrorism, epidemics, lightning, earthquakes, hurricanes, storms, floods, washouts, fire or other casualty, civil disturbances, explosions, breakage or accidents to equipment or machinery, threats of bombs or similar interruptions, confiscation or seizure by any government or public authority, nuclear reaction, radioactive contamination, accidents, or any other causes, whether of the kind herein enumerated or otherwise that are not reasonably within the control or caused by the party claiming the right to delay the performance on account of such occurrence; provided, however, in no circumstances shall the monetary inability of a party to perform any covenant, agreement or other obligation contained in this Agreement be construed to be an Event of Force Majeure.

21. Miscellaneous.

- A. This Agreement (and the schedules hereto) reflect the entire agreement between the parties with respect to the subject matter hereof, supersedes any and all prior agreements or understandings, written or oral and the parties shall not be bound by any agreement, understanding or conditions with respect to the subject matter hereof other than are expressly set forth and stipulated in this Agreement or any subsequent written agreement signed by both parties hereto.
- B. Notices by Licensor and Licensee to each other shall be deemed duly given if delivered personally with a signed receipt evidencing such delivery, mailed by certified mail, return receipt requested, postage prepaid, or delivered by a duly recognized air courier service to the following addresses:

Licensor: Iowa Barnstormers, IPF, L.L.C.  
210 NE Delaware Ave., Suite 200  
Ankeny, IA 50021  
Attn: Jeff Lamberti

With a Copy To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Licensor: Wells Fargo Arena  
c/o Global Spectrum, L.P.  
530 Third Street  
Des Moines, IA 50309

Attn: Matt Homan, General Manager

With a Copy To:

Comcast-Spectacor  
3601 S. Broad St.  
Philadelphia, PA 19148  
Attn: General Counsel

- C. Licensee shall not have the right to assign, sub-license, mortgage, pledge or otherwise transfer this Agreement or Licensee's rights and obligations herein without the prior written consent of Licensor. Licensor may assign this Agreement to any successor manager or operator of the Arena without restriction. This Agreement and all the terms, conditions and covenants hereof, shall, subject to the foregoing limitations as to assignment, inure to the benefit of and bind the parties hereto and their respective successors and permitted assigns.
- D. Pursuant to this Agreement, the relationship between the Licensor and Licensee is that of independent contractors and not agents or employees. Under no circumstances shall this Agreement be considered a contract of partnership or joint venture.
- E. This Agreement is entered into in the State of Iowa and, in the event of any controversy or litigation, shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to conflicts of law principles. The prevailing party in any litigation or other similar proceeding related thereto shall be entitled to recover its reasonable attorneys' fees and other costs incurred by the prevailing party in such action.
- F. No waiver shall be effective unless in writing and executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether or similar or dissimilar nature, unless expressly so stated in writing.
- G. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- H. Any headings preceding the text of the several sections hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- I. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.

- © 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 397–405



## SCHEDULING PROCEDURES

Licensee acknowledges that scheduling priority shall be given to exhibition, regular season and playoff games of the American Hockey League ("AHL") and National Basketball Development League ("NBDL") (or any of their respective successor leagues), other events that have previously licensed the Arena, family shows (including, without limitation, ice skating shows, motor sports, and the circus), concerts and "marquis" events, including but not limited to Iowa Boys and Girls State Championship Basketball Tournaments, the Iowa High School Boys Wrestling Championships, basketball Conference Tournaments and NCAA Tournaments.

Subject to the provisions of Section A. above:

2. Playoff Season. Licensor shall not be required to hold any dates for playoff games. Licensee shall notify Licensor as soon as possible regarding the anticipated time period in which playoff games are required to be held, and the parties shall coordinate with each other in an attempt to determine mutually agreeable dates for such playoff games, subject to the preemption provisions of Section A above.

Volume 1, Part 1, December 1972, 222 pages, Paper, \$3.95, \$5.95 Hb.